



**Billing Code: 4510.43-P**

**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**Petitions for Modification of Application of Existing Mandatory Safety Standards**

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

**DATES:** All comments on the petitions must be received by the Office of Standards, Regulations, and Variances on or before [Insert date 30 days from the date of publication in the FEDERAL REGISTER].

**ADDRESSES:** You may submit your comments, identified by “docket number” on the subject line, by any of the following methods:

1. **Electronic Mail:** [zzMSHA-comments@dol.gov](mailto:zzMSHA-comments@dol.gov). Include the docket number of the petition in the subject line of the message.
2. **Facsimile:** 202-693-9441.

3. Regular Mail: MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939, Attention: Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations, and Variances.

4. Hand-Delivery or Courier: MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939. Individuals who submit comments by hand-delivery are required to check in at the receptionist's desk on the 21<sup>st</sup> floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

**FOR FURTHER INFORMATION CONTACT:** Barbara Barron, Office of Standards, Regulations, and Variances at 202-693-9447 (Voice), [barron.barbara@dol.gov](mailto:barron.barbara@dol.gov) (E-mail), or 202-693-9441 (Facsimile). [These are not toll-free numbers].

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

(1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

(2) That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

## **II. Petitions for Modification**

Docket Number: M-2011-044-C.

Petitioner: Bowie Resources, LLC, P.O. Box 1488, Paonia, Colorado 81418.

Mine: Bowie No. 2 Mine, MSHA I.D. No. 05-04591, P.O. Box 1488, Paonia, Colorado 81418, located in Delta County, Colorado.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of batter-powered non-permissible surveying equipment in or inby the last open crosscut, including in the return airways. The petitioner states that:

(1) Equivalent permissible equipment does not exist.

(2) Equivalent non-electronic surveying equipment is obsolete technology and new replacement equipment does not exist; replacement parts and reconditioned equipment are becoming increasingly unavailable.

(3) The continued use of obsolete and worn or reconditioned equipment that may be inaccurate will result in a diminution of safety in that surveys will become increasingly inaccurate which could result in:

- (a) The development of entries that are not straight and true.
- (b) Pillar sizes that may become compromised.
- (c) The location of mine workings that may be inaccurate, creating reduced barrier pillar sizes when approaching old workings and outcrops.

(4) In the alternative to compliance with the existing standard, the petitioner proposes the following:

(a) Non-permissible surveying equipment will be used only when equivalent permissible equipment does not exist.

(b) All non-permissible surveying equipment will be limited to:

- (i) Topcon Electronic Total Station Model GTS-233W 7.2 volts d.c.
- (ii) Topcon Electronic Total Station Model GTS-235W 7.2 volts d.c.
- (iii) Topcon Electronic Total Station Model GTS-211D 7.2 volts d.c.
- (iv) Nikon Total Station Nivo Series Model Nivo 2.C 3.8 volts d.c.
- (v) Nikon DTM-302 Series Model DTM-352 7.2 volts d.c.
- (vi) Spectra Precision Nomad Data Collector 5.0 volts d.c.
- (vii) Equivalent equipment with equal or lower voltages.

(c) All non-permissible surveying equipment used in or inby the last open crosscut or in a return airway will be examined by a qualified person, as defined in 30

CFR 75.153, at least weekly to ensure that the equipment is being maintained in a safe operating condition. The results of the inspection will be recorded and the record will be retained for one year and made available for review by MSHA upon request.

(d) All non-permissible surveying equipment to be used in or inby the last open crosscut or in a return airway will be examined in fresh air outby the last open crosscut prior to being used to ensure that the equipment is being maintained in a safe operating condition. The examination will include:

- (i) Checking the instrument for any physical damage and the integrity of the case.
- (ii) Powering-up and shutting-down the instrument to ensure proper operation.
- (iii) Checking the battery compartment cover to ensure that it is securely fastened.

(e) A qualified person, as defined in 30 CFR 75.151, will continuously monitor for methane immediately before and during the use of non-permissible surveying equipment in or inby the last open crosscut or in a return airway.

(f) Non-permissible surveying equipment will not be used if methane is detected at or above 1.0 percent. When 1.0 percent or more methane is detected while the non-permissible surveying equipment is being used, the equipment will be deenergized immediately and withdrawn outby the last open crosscut or out of a return airway.

(g) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(h) Non-permissible surveying equipment will not be used when coal production is occurring in the entry being surveyed unless it is necessary for the surveying.

(i) Batteries contained in the non-permissible surveying equipment will be changed out or charged in intake air outby the last open crosscut.

(j) Personnel who use the non-permissible surveying equipment will be trained to recognize the hazards and limitations associated with its use.

(k) The non-permissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all of the terms and conditions in this petition.

(l) Within 60 days after this petition becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in this petition.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M-2011-045-C.

Petitioner: Alpha Engineering Services, Inc., 216 Business Street, Beckley, West Virginia 25801.

Mines: Signature Mining, Coalburg No. 1 Mine, MSHA I.D. No. 46-09082, and Newtown Energy, Coalburg No. 1 Mine, MSHA I.D. No. 46-08993, and Patriot Coal,

Harris No. 1 Mine, MSHA I.D. No. 46-01271, and Newtown Energy, Peerless Rachel Mine, MSHA I.D. No. 46-09258, located in Boone County, West Virginia; Arch-Wolf Run, Sentinel Mine, MSHA I.D. No. 46-04168, located in Barbour County, West Virginia; Arch-Wolf Run, Imperial Mine, MSHA I.D. No. 46-09115, and Arch-Wolf Run, Sago Mine, MSHA I.D. No. 46-08791, located in Upshur County, West Virginia; Arch-Wolf Run, Sycamore 2 Mine, MSHA I.D. No. 46-09060, located in Harrison County, West Virginia; Arch-Tygart Valley LLC, Tygart No. 1 Mine, MSHA I.D. No. 46-09192, located in Taylor County, West Virginia; Arch-Beckley LLC, Beckley Pocahontas Mine, MSHA I.D. No. 46-09216, and Performance Coal Co., Upper Big Branch Mine, MSHA I.D. No. 46-08436, located in Raleigh County, West Virginia; Newtown Energy, Eagle Mine, MSHA I.D. No. 46-08759, and Newtown Energy, Coalburg No. 2 Mine, MSHA I.D. No. 46-09231, and Speed Mining LLC, American Eagle Mine, MSHA I.D. No. 46-05437, located in Kanawha County, West Virginia; Prairie State, Lively Grove Mine, MSHA I.D. No. 11-03193, located in Washington County, Illinois; Pinnacle Mining, Pinnacle Mine, MSHA I.D. No. 46-01816, located in Wyoming County, West Virginia.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of battery-powered non-permissible surveying equipment in and inby the last open cross-cut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and laptop computers. The petitioner

proposes to use up-to-date, practical, and accurate technology in the preparation of mine maps to ensure the safety of the miners by providing proper and accurate mining directional control in the mine. The petitioner states that:

(1) Application of the existing standard would result in a diminution of safety to the miners.

(2) Underground mining, by its nature, size, complexity, and relative closeness to other abandoned mines, gas/oil wells, and other features, requires that accurate and precise measurements be completed in a prompt and efficient manner.

(3) The use of currently available non-electronic equipment is less accurate and less dependable than the available electronic equipment and requires more exposure of surveyors to hazardous mining environments. As an alternative to compliance with the existing standard, the petitioner proposes the following:

(a) To examine all non-permissible electronic surveying equipment prior to use in or inby the last open crosscut to ensure that the equipment is being maintained in a safe operating condition, and have a qualified person, as defined in 30 CFR 75.153, examine the equipment at intervals not to exceed 7 days. The examination results will be recorded in the weekly examination of electrical equipment book. The examinations will include:

(i) Checks of the instrument for any physical damage and the integrity of the case.

(ii) Removal of the battery and an inspection for corrosion and damage.

(iii) Inspection of the contact points to ensure a secure connection to the battery.



(iv) Reinsertion of the battery and a power-up and shut-down of the instrument to ensure proper connections.

(v) Checks of the battery compartment cover to ensure that it is securely fastened.

(b) A qualified person, as defined in 30 CFR 75.151, will continuously monitor for methane immediately before and during the use of non-permissible surveying equipment in or inby the last open crosscut or in the return.

(c) Non-permissible surveying equipment will not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more of methane is detected while the non-permissible surveying equipment is being used, the equipment will be deenergized immediately and the non-permissible electronic equipment will be withdrawn out of the return.

(d) Non-permissible surveying equipment will not be used in areas where float coal dust is in suspension.

(e) Batteries contained in the surveying equipment will be changed out or charged in fresh air and not in the return.

(f) Qualified personnel who use the surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of non-permissible surveying equipment.

(g) The non-permissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with the terms and conditions in this petition.

(h) Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR Part 48 training plan to the District Manager. These proposed revisions will specify initial and refresher training regarding the terms and conditions stated in the Proposed Decision and Order.

The petitioner further states that the nature of work at times will require that surveying services that would be covered by this petition be provided on short notice and, therefore, does not want the petitions to apply to specific companies or mines. The petitioner states that the list of companies and mines in this petition is not all-inclusive.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M-2011-046-C.

Petitioner: Alpha Engineering Services, Inc., 216 Business Street, Beckley, West Virginia 25801.

Mines: Signature Mining, Coalburg No. 1 Mine, MSHA I.D. No. 46-09082, and Newtown Energy, Coalburg No. 1 Mine, MSHA I.D. No. 46-08993, and Patriot Coal, Harris No. 1 Mine, MSHA I.D. No. 46-01271, and Newtown Energy, Peerless Rachel Mine, MSHA I.D. No. 46-09258, located in Boone County, West Virginia; Arch-Wolf Run, Sentinel Mine, MSHA I.D. No. 46-04168, located in Barbour County, West Virginia; Arch-Wolf Run, Imperial Mine, MSHA I.D. No. 46-09115, and Arch-Wolf Run, Sago Mine, MSHA I.D. No. 46-08791, located in Upshur County, West Virginia; Arch-Wolf Run, Sycamore 2 Mine, MSHA I.D. No. 46-09060, located in Harrison

County, West Virginia; Arch-Tygart Valley LLC, Tygart No. 1 Mine, MSHA I.D. No. 46-09192, located in Taylor County, West Virginia; Arch-Beckley LLC, Beckley Pocahontas Mine, MSHA I.D. No. 46-09216, and Performance Coal Co., Upper Big Branch Mine, MSHA I.D. No. 46-08436, located in Raleigh County, West Virginia; Newtown Energy, Eagle Mine, MSHA I.D. No. 46-08759, and Newtown Energy, Coalburg No. 2 Mine, MSHA I.D. No. 46-09231, and Speed Mining LLC, American Eagle Mine, MSHA I.D. No. 46-05437, located in Kanawha County, West Virginia; Prairie State, Lively Grove Mine, MSHA I.D. No. 11-03193, located in Washington County, Illinois; Pinnacle Mining, Pinnacle Mine, MSHA I.D. No. 46-01816, located in Wyoming County, West Virginia.

Regulation Affected: 30 CFR 75.507-1(a) (Electric equipment other than power-connection points; outby the last open crosscut return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of battery-powered non-permissible surveying equipment outby the last open cross-cut in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and laptop computers. The petitioner proposes to use up-to-date, practical, and accurate technology in the preparation of mine maps and ensure the safety of the miners by providing proper and accurate mining directional control in the mine. The petitioner states that:

(1) Application of the existing standard would result in a diminution of safety to the miners.

(2) Underground mining, by its nature, size, complexity, and relative closeness to other abandoned mines, gas/oil wells, and other features, requires that accurate and precise measurements be completed in a prompt and efficient manner.

(3) The use of currently available non-electronic equipment is less accurate and less dependable than the available electronic equipment and requires more exposure of surveyors to hazardous mining environments. As an alternative to compliance with the existing standard, the petitioner proposes the following:

(a) To examine all non-permissible electronic surveying equipment prior to use in or inby the last open crosscut to ensure that the equipment is being maintained in a safe operating condition, and have a qualified person, as defined in 30 CFR 75.153, examine the equipment at intervals not to exceed 7 days. The examination results will be recorded in the weekly examination of electrical equipment book. The examinations will include:

(i) Checks of the instrument for any physical damage and the integrity of the case.

(ii) Removal of the battery and an inspection for corrosion and damage.

(iii) Inspection of the contact points to ensure a secure connection to the battery.

(iv) Reinsertion of the battery and a power-up and shut-down of the instrument to ensure proper connections.

(v) Checks of the battery compartment cover to ensure that it is securely fastened.

(b) A qualified person, as defined in 30 CFR 75.151, will continuously monitor for methane immediately before and during the use of non-permissible surveying equipment in or inby the last open crosscut or in the return.

(c) Non-permissible surveying equipment will not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more of methane is detected while the non-permissible surveying equipment is being used, the equipment will be deenergized immediately and the non-permissible electronic equipment will be withdrawn out of the return.

(d) Non-permissible surveying equipment will not be used in areas where float coal dust is in suspension.

(e) Batteries contained in the surveying equipment will be changed out or charged in fresh air and not in the return.

(f) Qualified personnel who use the surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of non-permissible surveying equipment.

(g) The non-permissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with the terms and conditions in this petition.

(h) Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR Part 48 training plan to

the District Manager. These proposed revisions will specify initial and refresher training regarding the terms and conditions stated in the Proposed Decision and Order.

The petitioner further states that the nature of work at times will require that surveying services that would be covered by this petition be provided on short notice and, therefore, does not want the petitions to apply to specific companies or mines. The petitioner states that the list of companies and mines in this petition is not all-inclusive.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M-2011-047-C.

Petitioner: Alpha Engineering Services, Inc., 216 Business Street, Beckley, West Virginia 25801.

Mines: Signature Mining, Coalburg No. 1 Mine, MSHA I.D. No. 46-09082, and Newtown Energy, Coalburg No. 1 Mine, MSHA I.D. No. 46-08993, and Patriot Coal, Harris No. 1 Mine, MSHA I.D. No. 46-01271, and Newtown Energy, Peerless Rachel Mine, MSHA I.D. No. 46-09258, located in Boone County, West Virginia; Arch-Wolf Run, Sentinel Mine, MSHA I.D. No. 46-04168, located in Barbour County, West Virginia; Arch-Wolf Run, Imperial Mine, MSHA I.D. No. 46-09115, and Arch-Wolf Run, Sago Mine, MSHA I.D. No. 46-08791, located in Upshur County, West Virginia; Arch-Wolf Run, Sycamore 2 Mine, MSHA I.D. No. 46-09060, located in Harrison County, West Virginia; Arch-Tygart Valley LLC, Tygart No. 1 Mine, MSHA I.D. No. 46-09192, located in Taylor County, West Virginia; Arch-Beckley LLC, Beckley

Pocahontas Mine, MSHA I.D. No. 46-09216, and Performance Coal Co., Upper Big Branch Mine, MSHA I.D. No. 46-08436, located in Raleigh County, West Virginia; Newtown Energy, Eagle Mine, MSHA I.D. No. 46-08759, and Newtown Energy, Coalburg No. 2 Mine, MSHA I.D. No. 46-09231, and Speed Mining LLC, American Eagle Mine, MSHA I.D. No. 46-05437, located in Kanawha County, West Virginia; Prairie State, Lively Grove Mine, MSHA I.D. No. 11-03193, located in Washington County, Illinois; Pinnacle Mining, Pinnacle Mine, MSHA I.D. No. 46-01816, located in Wyoming County, West Virginia.

Regulation Affected: 30 CFR 77.1914(a) (Electrical equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of battery-powered non-permissible surveying equipment in shaft and slope construction, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and laptop computers. The petitioner proposes to use up-to-date, practical, and accurate technology in the preparation of mine maps and ensure the safety of the miners by providing proper and accurate mining directional control in the mine. The petitioner states that:

(1) Application of the existing standard would result in a diminution of safety to the miners.

(2) Underground mining, by its nature, size, complexity, and relative closeness to other abandoned mines, gas/oil wells, and other features, requires that accurate and precise measurements be completed in a prompt and efficient manner.

(3) The use of currently available non-electronic equipment is less accurate and less dependable than the available electronic equipment and requires more exposure of surveyors to hazardous mining environments. As an alternative to compliance with the existing standard, the petitioner proposes the following:

(a) To examine all non-permissible electronic surveying equipment prior to use in or inby the last open crosscut to ensure the equipment is being maintained in a safe operating condition, and have a qualified person, as defined in 30 CFR 75.153, examine the equipment at intervals not to exceed 7 days. The examination results will be recorded in the weekly examination of electrical equipment book. The examinations will include:

(i) Checks of the instrument for any physical damage and the integrity of the case.

(ii) Removal of the battery and an inspection for corrosion and damage.

(iii) Inspection of the contact points to ensure a secure connection to the battery.

(iv) Reinsertion of the battery and a power-up and shut-down of the instrument to ensure proper connections.

(v) Checks of the battery compartment cover to ensure that it is securely fastened.

(b) A qualified person, as defined in 30 CFR 75.151, will continuously monitor for methane immediately before and during the use of non-permissible surveying equipment in or inby the last open crosscut or in the return.

(c) Non-permissible surveying equipment will not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more of methane is



detected while the non-permissible surveying equipment is being used, the equipment will be deenergized immediately and the non-permissible electronic equipment will be withdrawn out of the return.

(d) Non-permissible surveying equipment will not be used in areas where float coal dust is in suspension.

(e) Batteries contained in the surveying equipment will be changed out or charged in fresh air and not in the return.

(f) Qualified personnel who use the surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of non-permissible surveying equipment.

(g) The non-permissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with the terms and conditions in this petition.

(h) Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR Part 48 training plan to the District Manager. These proposed revisions will specify initial and refresher training regarding the terms and conditions stated in the Proposed Decision and Order.

The petitioner further states that the nature of work at times will require that surveying services that would be covered by this petition be provided on short notice and, therefore, does not want the petitions to apply to specific companies or mines. The petitioner states that the list of companies and mines in this petition is not all-inclusive.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M-2011-014-M

Petitioner: St. Marys Cement, Inc. (U.S.), 16000 Bells Ray Road, P.O. Box 367, Charlevoix, Michigan 49720.

Mine: St. Marys Cement, Charlevoix Plant, MSHA I.D. No. 20-00038, 16000 Bells Ray Road, P.O. Box 367, Charlevoix, Michigan 49720.

Regulation Affected: 30 CFR 56.14101(a)(2) and (3) (Brakes).

Modification Request: The petitioner requests a modification of the existing standard for self-propelled mobile equipment for its 1997 Tennant Sweeper, Model #830. The petitioner states that:

(1) The Tennant Sweeper is operated only on paved flat roads within the surface mine property.

(2) The sweeper primarily operates with use of a hydraulic system. When the foot is taken off the accelerator the sweeper stops.

(3) The back brakes are currently inoperable and the unit is so old that the parts are hard to obtain to fix the system.

(4) The sweeper has a functional front braking system capable of stopping and holding the vehicle with a full load on the steepest incline it travels.

(5) The sweeper is operated only on day shift, only travels on dry roads and dusty days when the roads are not wet or slippery, and is put up for the winter.

(6) The sweeper is not capable of traveling over 5 miles per hour. It is generally run between 3 and 5 miles per hour within the plant. The standard on brakes requires at least 10 miles per hour to test the brakes, and the sweeper cannot go that fast.

(7) The sweeper has a fully functional parking brake system capable of holding the machine with a full load on the steepest incline it travels.

(8) The unit is not being supported by Tennant, the manufacturer.

(9) Any spare parts that can be obtained will no longer be produced once they are used up.

(10) What is available to fix the unit has been ordered, and the unit is needed to comply with environmental regulations.

As an alternative, the petitioner proposes to rely on the hydraulic system, the front brake system, and the parking brake to stop and hold the equipment with its typical load on the maximum grade it travels.

The petitioner asserts that the proposed alternative method will at all times guarantee the miners no less than the same measure of protection as provided by the existing standard.

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Patricia W. Silvey  
Certifying Officer

Dated: February 10, 2012

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